

District Judge Richard A. Jones

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

BASSAM YUSEF KHOURY, et al.,	)	No. C13-1367-RAJ
	)	
Plaintiffs-Petitioners,	)	
	)	
v.	)	
	)	<b>ORDER ADOPTING PARTIES'</b>
NATHALIE ASHER, et al.,	)	<b>STIPULATION AND DIRECTING</b>
	)	<b>ENTRY OF JUDGMENT</b>
Defendants-Respondents.	)	
	)	

In the wake of the court's March 11 order, the parties have submitted a stipulation. Dkt. # 45. They agree that the court may dismiss Plaintiff's claim invoking the Due Process clause of the Fifth Amendment without prejudice. They further agree that the court need not enter a permanent injunction, and that the Defendants will instead comply with the terms of the stipulation.

The court GRANTS the stipulation and orders as follows.

- 1) The court dismisses Plaintiffs' Due Process claim without prejudice.
- 2) The parties are bound by the terms of their stipulation, as set forth below.
- 3) The clerk shall enter judgment for Plaintiffs, and that judgment shall incorporate the court's March 11 order certifying a class and granting declaratory relief in favor of the class.
- 4) The clerk shall TERMINATE this civil action, although the court retains jurisdiction for the purpose of enforcing the terms of the stipulation.

//

//

The remainder of this order reproduces the parties' stipulation as they submitted it.

Dated this 9th day of April, 2014.



The Honorable Richard A. Jones  
United States District Court Judge

### STIPULATION

Plaintiffs-Petitioners Bassam Yusef Khoury, et al. ("Plaintiffs"), and Defendants-Respondents Nathalie Asher, et al. ("Defendants" and collectively with Plaintiffs, the "Parties"), through counsel, submit the following stipulated statement and order ("Stipulation") pursuant to the Court's March 11, 2014, order (ECF No. 44).

#### **I. STIPULATION RELATING TO PLAINTIFFS' DUE PROCESS CLAIM**

Plaintiffs will take no further steps to pursue to judgment their Due Process claim set forth as the Second Cause of Action in Plaintiffs' First Amended Class Action Complaint and Petition For Writ of Habeas Corpus, ECF No. 19 ("Due Process Claim"). Plaintiffs stipulate to voluntarily dismiss without prejudice their Due Process Claim.

#### **II. DEFINITIONS RELATING TO RELIEF**

In addition to the capitalized terms defined above, the following terms shall have the following meanings in this Stipulation:

1. "Order" means the order of the Court entered in this action on March 11, 2014, ECF No. 44.
2. "ICE" means U.S. Immigration and Customs Enforcement.
3. "Current Class Detainee" means any individual/detainee deemed by ICE to be an 'alien' currently in immigration detention whom ICE has been detaining in the Western District of Washington pursuant to 8 U.S.C. § 1226(c) prior to March 11, 2014, but who was not taken into

1 immigration custody immediately upon his or her release from criminal custody for an offense  
2 referenced in 8 U.S.C. § 1226(c)(1).<sup>1</sup>

3 4. “New Class Detainee” means any individual/detainee deemed by ICE to be an  
4 ‘alien’ whom ICE has taken or takes into immigration custody in the Western District of  
5 Washington on or after March 11, 2014, but who was not taken into immigration custody  
6 immediately upon his or her release from criminal custody for an offense referenced in 8 U.S.C. §  
7 1226(c)(1).

8 5. “Form I-286” means Department of Homeland Security Form I-286, attached  
9 hereto as Exhibit A.

10 6. “EOIR” means the United States Department of Justice Executive Office for  
11 Immigration Review.

12 7. “Custody Redetermination” means an individualized review of ICE’s custody  
13 determination for Current Class Detainees and New Class Detainees conducted by an immigration  
14 judge pursuant to 8 U.S.C. § 1226(a), 8 C.F.R. § 1003.19, and 8 C.F.R. § 1236.1(d)(1).

### 15 **III. STIPULATIONS RELATING TO RELIEF**

16 The Parties stipulate that injunctive relief is unnecessary to afford complete relief to the  
17 class in light of Defendants’ following response to the Order, which Defendants stipulate to  
18 maintain for so long as the Order remains valid and enforceable:

19 1. ICE will detain all New Class Detainees subject to 8 U.S.C. § 1226(a), rather than  
20 to 8 U.S.C. § 1226(c).

21 2. As of March 26, 2014, ICE has identified all Current Class Detainees, provided  
22 Current Class Detainees with a custody determination pursuant to 8 U.S.C. § 1226(a) and 8 C.F.R.

---

23 <sup>1</sup> Plaintiffs note that they object to use of the term “alien” unless citing to the statute or case law.  
24 As the Sixth Circuit recently stated, “[w]e recognize that using the term ‘alien’ to refer to other  
25 human beings is offensive and demeaning. We do not condone the use of the term and urge  
26 Congress to eliminate it from the U.S. Code. We use it here, however, to be consistent with the  
27 statutory language and to avoid any confusion in replacing a legal term of art with a more  
28 appropriate term.” *Flores v. U.S. Citizenship and Immigration Services*, 718 F.3d 548, 551 n.1  
(6th Cir. 2013). Pointedly, the majority opinion of the Supreme Court’s most recent decision  
analyzing the Immigration and Nationality Act replaced any reference to “alien” with  
“noncitizen.” *Moncrieffe v. Holder*, 133 S.Ct. 1678 (2013).

§ 1236.1(c)(8), and provided Current Class Detainees with notice of ICE's custody determination on Form I-286.

3. By May 2, 2014, EOIR will commence Custody Redeterminations for all Current Class Detainees who request them pursuant to 8 C.F.R. § 1003.19(b) on or before April 2, 2014.

4. EOIR will provide Custody Redeterminations for all other Current Class Detainees and for all New Class Detainees pursuant to 8 U.S.C. § 1226(a), 8 C.F.R. § 1003.19 and 8 C.F.R. § 1236.1(d)(1).

5. By June 2, 2014, undersigned counsel for Defendants will file and serve a certification that Current Class Detainees have been processed and treated as detainees subject to 8 U.S.C. § 1226(a) and that those who requested Custody Redeterminations pursuant to 8 C.F.R. § 1003.19(b) on or before April 2, 2014, had their Custody Redeterminations commenced, with all procedural protections allowable by law, by May 2, 2014.

6. By June 2, 2014, Defendants will provide class counsel with a list of (i) Current Class Detainees, including full name, and A number; (ii) the date they were detained by Defendants; (iii) information about Custody Redetermination hearings, including whether or not one was conducted, and the date of hearing; and (iv) the result of any Custody Redetermination, including specifying release on own recognizance and the amount of bond set by an immigration judge.

7. By June 2, 2014, Defendants will provide class counsel with copies of all I-286 forms provided to each Current Class Detainee.

Dated: April 2, 2014

NORTHWEST IMMIGRANT  
RIGHTS PROJECT

/s/ Chris Strawn

Chris Strawn, WSBA No. 32243  
Matt Adams, WSBA No. 28287  
615 Second Avenue, Suite 400  
Seattle, WA 98104  
(206) 957-8611

Respectfully submitted,

STUART F. DELERY  
Assistant Attorney General  
Civil Division

COLIN A. KISOR  
Acting Director  
Office of Immigration Litigation  
District Court Section

1 Betsy Tao, WSBA No. 33348  
2 1331 G Street NW, Suite 200  
3 Tacoma, WA  
4 (206) 957-8647

AARON S. GOLDSMITH  
Senior Litigation Counsel

5 ACLU IMMIGRANTS' RIGHTS PROJECT  
6 Michael Tan, Cal. Bar. No. 284869  
7 Admitted pro hac vice  
8 39 Drumm St.  
9 San Francisco, CA 94111  
10 (415) 343-0779

TIMOTHY M. BELSAN  
Trial Attorney

LORI B WARLICK  
Trial Attorney

11 Judy Rabinovitz, NY Bar. No. JF-1214  
12 Admitted pro hac vice  
13 Sarah Mehta, NY Bar. No. 4929584  
14 Admitted pro hac vice  
15 125 Broad Street  
16 New York, NY 10004  
17 (212) 549-2619

/s/ Hans H. Chen  
HANS H. CHEN  
Trial Attorney  
United States Department of Justice  
Civil Division  
Office of Immigration Litigation  
District Court Section  
P.O. Box 868, Ben Franklin Station  
Washington, DC 20044  
Telephone: (202) 307-4469  
Facsimile: (202) 305-7000  
Email: hans.h.chen@usdoj.gov

18 ACLU OF WASHINGTON FOUNDATION  
19 Sarah A. Dunne, WSBA No. 34869  
20 901 Fifth Avenue, Suite 630  
21 Seattle, WA 98164  
22 (206) 624-2184

ATTORNEYS FOR DEFENDANTS-  
RESPONDENTS

23 GIBBS HOUSTON PAUW  
24 Robert Pauw, WSBA No. 13613  
25 Devin T. Theriot-Orr, WSBA No. 33995  
26 1000 Second Avenue, Suite 1600  
27 Seattle, WA 98104-1003  
28 (206) 682-1080

ATTORNEYS FOR PLAINTIFFS-PETITIONERS